

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOSE GARCIA and ROSA GARCIA,

**ANSWER**

Plaintiffs,

08 CV 1198 (CLB)

-against-

THE CITY OF NEWBURGH , POLICE OFFICER PATRICK KELLY, POLICE OFFICER RAYMOND GORDINEER, DETECTIVE LORENZO D'ANGELICO, POLICE OFFICER DOMINICK FORMISANO, POLICE OFFICER THOMAS DOUGLAS and UNKNOWN POLICE OFFICERS 1-10,

Defendants.

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The defendants, by their attorneys, McCabe & Mack LLP, as and for their answer to the complaint of the plaintiffs, respectfully show to the court and allege as follows.

**INTRODUCTORY STATEMENT**

1. With regard to paragraph numbered "1" of the complaint, neither admit nor deny as states conclusions of law.

**PARTIES**

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "3" of the complaint.

3. With regard to paragraphs numbered "4" and "5" of the complaint, deny knowledge or information sufficient to form a belief as to the truth of the allegations with respect to "unknown police officers".

4. With regard to paragraph numbered "6" of the complaint, admit only that the individually named defendants are employed by Newburgh as police officers and neither admit nor deny the remaining allegations as they state conclusions of law.

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5. With regard to paragraph numbered "7" of the complaint, deny knowledge or information sufficient to form a belief as to the truth of the allegations with respect to "unknown police officers".

### **FACTUAL ALLEGATIONS**

6. With regard to paragraph numbered "9" of the complaint, admit only that police officers came to plaintiffs' house on the evening of March 30, 2007 and deny the remaining allegations except admit plaintiff was arrested.

7. With regard to paragraph numbered "10" of the complaint, admit only that various police officers entered plaintiffs' home looking for Victor and a child he had recently abducted at knife point.

8. With regard to paragraph numbered "11" of the complaint, admit only that plaintiff and his son were asked about Victor and deny the remaining allegations.

9. Deny those allegations contained in paragraphs numbered "12", "15", "16", "17", "18" and "19" of the complaint.

10. With regard to paragraph numbered "14" of the complaint, admit only that plaintiff was arrested and held for approximately two hours before being released.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "20" of the complaint.

### **AS TO THE FEDERAL CAUSES OF ACTION**

12. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "20" and incorporated by reference in paragraph "21" of the complaint as if the same were more fully set forth herein at length.

13. Deny those allegations contained in paragraph numbered "22" of the complaint.

**AS TO MUNICIPAL LIABILITY**

14. Deny those allegations contained in paragraphs numbered "23" and "24" of the complaint.

**AS TO ATTORNEYS' FEES**

15. Deny those allegations contained in paragraph numbered "25" of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

16. Probable cause existed for Jose Garcia's arrest.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

17. All force used, if any, was reasonable and necessary.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

18. The defendants acted in good faith and are entitled to qualified immunity.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

19. The premises search of plaintiffs' house for "Victor" was justified and lawful due to exigent circumstances.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

20. Punitive damages are not recoverable against a municipality.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

21. The Court lacks jurisdiction over the individual defendants due to an insufficiency of service of process.

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WHEREFORE, the defendants demand judgment dismissing the complaint of the plaintiffs herein, plus the costs and disbursements of this action and for such other and further relief as to the Court may seem just and proper.

DATED: Poughkeepsie, New York  
February 25, 2008

Yours, etc.

McCABE & MACK LLP

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